
**COMMISSION MEETING
THURSDAY, FEBRUARY 14, 2002
DRAFT MINUTES**

Chair Orr called the meeting to order at 1:30 p.m., at the West Coast Olympia Hotel located in Olympia and welcomed the attendees. He introduced the members and staff present, and announced that the newest and fifth commissioner to be appointed is Janice Niemi, an attorney, former senator, and former judge. Welcome Commissioner Niemi.

MEMBERS PRESENT:

**COMMISSIONER GEORGE ORR, CHAIR;
COMMISSIONER CURTIS LUDWIG, VICE CHAIR;
COMMISSIONER LIZ McLAUGHLIN;
COMMISSIONER ALAN PARKER;
COMMISSIONER JANICE NIEMI;**

OTHERS PRESENT:

**RICK DAY, Executive Director;
ED FLEISHER, Deputy Director, Policy & Government Affairs;
ROBERT BERG, Deputy Director, Operations;
CALLY CASS-HEALY, Assistant Director, Field Operations;
DERRY FRIES, Assistant Director, Licensing Operations;
AMY PATJENS, Manager, Communications & Legal Dept.;
JERRY ACKERMAN, Assistant Attorney General;
SHIRLEY CORBETT, Executive Assistant; and
GAIL GRATE, Administrative Assistant**

Chair Orr welcomed and introduced two Partnership Program participants: Joanne Graley, an accountant in the Business Office, and Isabel Quichocho, an office assistant in the Licensing Unit, who previously worked in the Tacoma Field Office. The program is designed to help office staff understand what other units within the agency do. Today they are attending the Commission meeting to learn more about what takes place.

1. DIRECTOR'S REPORT AND REVIEW OF AGENDA:

Rick Day, Director, welcomed Judge Niemi to the Commission and said staff appreciates the time she spent at commission headquarters office. Director Day briefly reviewed Thursday's agenda. He said that Residence East scheduled for a qualification review has been pulled from agenda. A summary suspension was issued due to negative cash flow in the second quarter.

Director Day reviewed the agenda for Friday, which will begin with the approval of the minutes. Deputy Director Ed Fleisher will review the extensive list of legislation 3. Amy Patjens will discuss the bingo and pull-tab rules up for final action, the Kirkland petition up for discussion for its third appearance on the agenda, distributor and manufacturer credit restriction rules and the qualification review rules that are up for discussion and possible filing. The qualification review rules are basically the complete redo of the process that the Commission uses for qualification reviews. No changes are proposed for tomorrow's agenda.

A. Legislative Update – Director Day

Quite a substantial piece of legislative information was added to the Commissioners' packets. Deputy Director Fleisher will be reviewing the entire packet. Director Day briefly addressed the legislative proposals and other

bills that were added: HB 2624 - Shared Lottery; HB 2631 - Background Checks (our version of a bill in the Senate); HB 2701 - Pathological Gambling; HB 2767 - Electronic Benefit Cards; HB 2900 - Consistency in Gambling; HB 2946 - Video Lottery Games; HB 2953 - Video Pull-tabs; and substitute for SB 6560 - Shared Lottery Game. Director Day talked to briefly about agency legislation issues that they have a direct interest in. Director Day noted that HB 2460 provides a visual representation from a 500-page bill transferring \$2 million from the Gambling Commission's Revolving Fund to the General Fund. Letters that were sent to the Chair of the Senate Ways and Means and to the Chair of Appropriations in the House from Director Day, including a copy of the letter sent to the Governor from Chair Orr are included. At the January commission meeting, these letters were authorized by the Commissioners to take a position against the transfer from the Gambling Revolving Fund.

Commissioner McLaughlin verified that the current limitation under I-601 would not allow the Commission to increase fees to regain the \$2 million if funds were transferred. She asked what the agency would have to do if the funds are ultimately transferred. **Director Day** said the agency would have to take action to reduce expenses. Commissioner McLaughlin asked if that meant letting people go. Director Day affirmed the possibility. Commissioner McLaughlin asked if there had been a determination on whom, how, and when. Director Day said that has not been done, the budget is based on allocations and 100 percent expenditures. It is anticipated that staff will have to reduce approximately \$75,000 in expenditures a month. Staff is in the process of outlining the potential reductions and they are looking at infrastructure improvements such as automation that has already been paid for by the licensees, plus a combination of layoffs that would be in the area of 6 or 7 positions.

Commissioner McLaughlin asked what would happen to the agency's licensees regarding regulation or oversight regulation. **Director Day** responded that depending upon where the reductions are targeted, the agency might have to reduce their activity in some form, which could impact the regulatory program directly. Commissioner McLaughlin noted that in addition to people who may lose their job, this bill could hurt the licensees. Director Day affirmed it could slow processes in the operation because of some automation projects scheduled would have to be scaled back, as well as having to reduce the agency's regulatory effort. Director Day reported that staff is continuing to work with legislators. Everyone has acknowledged this is a tough budget time. Although we don't have any commitments at this point regarding the fund transfer, several members have commented that they aren't supportive of transfers out of revolving accounts. This continues to be a difficult situation.

Director Day said we are continuing to work with members of Commerce and have talked with both sides of the Legislature and visited with a number of members of Ways and Means and House Appropriations, as well as Representative Sommers. We have had very respectful visits, but don't have any commitments at this point. There have been several members who have commented that they aren't supportive of transfers out of revolving accounts at all.

Director Day gave a quick update on the agency bills. SB 6921/HB2631 - the fingerprint bill had its hearing in the Senate and the House and both bills were passed out of Rules Committee. According to staff, the Senate version should come out today. We have had very good reception in both committees and hope to see it move forward. Even though it is a minor bill, it is very important. According to the FBI, the state statute has to be worded more specifically for the agency to be able to continue using the system for background checks and fingerprint submittals. The agency is continuing to work with the Liquor Control Board. Without any controversy attached to the bill, Director Day was confident that it would move forward.

The Cheating bill, which is the same bill that was in the session last year, moved out of the Senate and is scheduled next Wednesday for a hearing in the House Criminal Justice and Corrections Committee. The agency, through Deputy Director Fleisher, provided some testimony on SB 6193, Consistency in Gambling, primarily on a technical basis and not a pro/con basis.

Director Day reported that last fall the Commission discussed and asked for a report on multiple ownership of house-banked card rooms. There are about four groups in the state of Washington that own three or more house-banked card rooms. He deferred to Assistant Director Derry Fries to present the report.

B. Multiple House-Banked Card Room Ownerships – Derry Fries

Derry Fries, Assistant Director of Licensing, reported that, historically, the Commission has taken the position that ownership of house-banked card rooms should not be limited. RCW 9.46.070 states that “The Commission shall not deny a license to an otherwise qualified applicant in an effort to limit the number of licenses to be issued.” He said that even when this was hotly debated during the Card Room Enhancement Program (CREP), the pilot program that was initiated back in 1996, the Commission chose not to limit card rooms. As they consider this issue, part of the debate should focus on the definition of ownership. As of October 2001, there were 69 house-banked card rooms operating throughout the state. Each of these house-banked facilities and those pending applications are also owned by privately held corporations or limited liability companies (LLCs). In some cases, the ownership goes anywhere from 1 percent to 100 percent of either stock ownership or LLC membership. At present, commission rules do not require the disclosure of any ownership less than 10 percent or more of stock or LLC membership. As of October 2001, of the 69 house-banked card rooms, there are only the four incidents that the Director had mentioned where a substantial interest holder has an interest in three or more of these facilities. Mr. Fries presented diagrams of each of these incidents today, used in conjunction with a mapping program developed by the criminal intelligence unit. The first diagram identified Ruth Michaels who owns 100 percent of Michaels Development, LLC, who owns 100 percent of three facilities: the Double Down Saloon in La Center, The Palace in La Center, and Chips Casino in Bremerton. The others are minority interest holders in the Chips Casino.

Mr. Fries stated that the Estate of Fred Steiner owns 88 percent of GSG Corporation, who owns 100 percent of Diamond Lil’s in Renton, and 100 percent in Freddie’s Club of Renton. The Estate also owns 100 percent of Freddie’s Club in Auburn and 44 percent in Freddie’s Club in Everett. Therefore, the estate is involved in four facilities. **Commissioner Parker** asked who the controlling parties are in the Estate of Fred Steiner. Mr. Fries replied that it’s in the hands of an executor. Currently, an attorney is speaking on behalf of the heirs of Fred Steiner. Commissioner Parker asked if the heirs actually direct his investments. Mr. Fries affirmed.

Commissioner McLaughlin asked if any changes had been made since Mr. Steiner’s death. **Mr. Fries** responded that no changes had yet been made, but this was as of October and he believed that as early as this afternoon there could be some changes.

Mr. Fries moved to the next diagram showing that Eric Nelson owns 100 percent of Cleopatra Gaming Management LLC, who owns 51 percent of four LLC’s, who own 100 percent of these establishments. If you go on the reverse side of the house, it’s Phoenix Leisure Corporation who owns 100 percent of Phoenix Colorado Inc., who owns 100 percent of Phoenix Washington LLC, and going the other way it’s 49 percent of each one of those LLCs and the establishments. **Commissioner McLaughlin** asked what was the purpose of the LLCs when they only own one other casino. Mr. Fries replied that some of it is liability and some of it is for tax purposes. It’s up to the individual stockholder, owners, or membership. He reminded them that in an LLC it is membership versus stock.

Mr. Fries pointed out that the next diagram shows that of the Iszley Brothers, Tim Iszley owns 60 percent of Little Nevada Inc., 52.5 percent of Big Nevada Inc., 60 percent of Little Nevada II Inc., and 70 percent of Little Nevada III Inc. **Commissioner McLaughlin** asked why one incorporation doesn’t take care of all of them. Mr. Fries replied it’s how they chose to break it down and has to do with liability and taxing issues. **Chair Orr** added that it was also investment choices. Mr. Fries affirmed, adding that these involve different people and some are related. Mr. Fries stated that Mike Iszley owns 30 percent of the same facilities in all areas.

Director Day said there were a few more items he wished to report on:

C. Agency Communications –

Director Day referred the Commissioners to his memorandum regarding the firearms law enforcement issue. He said it documented the text of their decision and conversations.

D. Monthly Update Reports –

Director Day pointed out that the administrative cases update shows the date, the original charge issued by the agency, and any current information. He pointed out there are no Federal legislation tidbits included at this time because nothing has changed. If any Federal legislation moved forward, it would be included.

E. News Articles –

Director Day noted only noteworthy news articles were included and staff would focus on articles directly relating to commission action, articles that have some local interest, and those that have some reflection of previous discussions. The first one documents the reports on the East Wenatchee moratorium on licenses and discusses their ongoing debate. Wenatchee adopted an ordinance totally banning card rooms. East Wenatchee is now trying to ban card rooms. There are some applications pending for premises currently located in East Wenatchee. This article documents some of the controversy. Mickey O'Reilly's Sports Bar & Grill, Mickey O'Reilly's Inn at the River, and the Buzz Inn Steak House all have card room license applications submitted that are pending.

Director Day pointed out that the next article covered the Commission's approval of the Muckleshoot and the Snoqualmie Compacts. The third article speculates about the Cowlitz Tribe's potential casino. No formal contact has been received for compact negotiations at this point.

The next article concerns banks and credit cards. **Director Day** recalled the Commissioners' discussion about various methods to deal with Internet gambling. In this case, a number of banks have moved forward with not allowing the use of credit cards, which is essentially credit for Internet gambling. The next article documents that Tennessee has ruled that electronic gambling is illegal and they are proceeding to take action against machines and those who possess them.

The next article pertains to the ban on video poker that was overturned in Georgia. Part of the reason these machines originally got into difficulties was because they were only supposed to pay out merchandise prizes, but moved into cash prizes.

An article was included from the *Seattle Times* on gambling addiction. Lastly is the WIGA letter to the Legislature and an Internet gambling article from a gaming publication.

2. **New Licenses, Changes, And Tribal Certifications:**

Commissioner Ludwig made a motion seconded by **Commissioner McLaughlin** to approve the new licenses, changes, and tribal certifications listed on pages 1 through 16 of the agenda packet under License Approvals. *Vote taken; the motion carried with five aye votes.*

3. **Group Iv Qualification Review:**

Residence East, Bellevue: (Removed from agenda)

4. **Group V Qualification Review:**

Music Works Northwest, Bellevue:

Monty Harmon, Program Manager, Financial Investigations Unit, reported that this organization was formed in 1965. Their mission is to provide high quality music education and performance opportunities to people of all ages. Licensed since 1974, the organization is governed by a board of 15 active members. This includes four officers who conducted 10 meetings during the year. The organization's programs for the year included private and group instruction for voice and various instruments. In the year 2000 they completed a new facility to conduct training programs and their programs have grown substantially. Other programs include music technology, jazz, percussion, vocal, and chamber music ensembles, music therapy services, and summer music camps.

Based on staff's analysis of the financial statements, narrative and supplemental information provided with their application, the organization made progress toward accomplishing its stated purposes. Music Works Northwest of Bellevue is qualified as a bona fide charitable nonprofit organization for purposes of conducting authorized gambling activities. Staff recommends Music Works Northwest be approved as a charitable organization and be authorized to conduct gambling activities in the state of Washington. **Chair Orr** opened the topic for public discussion. There was none. Mr. Stephen Fitzgerald, Primary Bingo Manager, was present but did not come forward to speak.

Commissioner Ludwig made a motion seconded by **Commissioner McLaughlin** to approve Music Works Northwest located in Bellevue as a charitable organization and that they be authorized to conduct gambling activities in the state of Washington. *Vote taken; motion passed with five aye votes.*

5. Manufacturer Review:

Aristocrat Technologies, Inc., Las Vegas

Silvia Reyes, Special Agent in Financial Investigations Unit, reported this organization applied for a manufacturer's license to market their game themes for Sierra Design Groups Tribal Lottery Systems. This organization is a wholly-owned U.S. subsidiary of Aristocrat International, an Australian holding company, which, in turn, is a wholly-owned subsidiary of Aristocrat Leisure Limited, a publicly-traded company in Australia, which are traded on the Australia Stock Exchange. Aristocrat Technologies is located in Las Vegas and the parent company, Aristocrat Leisure, is located in Sydney, Australia. Currently, Aristocrat Technologies' registered agent is William Crowley, who is from Crowley Law Offices in Seattle, Washington. The Corporation's substantial interest holders, by virtue of their stock ownership, are members of the Ainsworth Family, who were the founders of the original Aristocrat Company. Currently, Aristocrat Technologies, the U. S. company, is licensed in numerous jurisdictions throughout the United States and Canada. The Canadian company, Aristocrat Leisure, is also licensed in numerous international and tribal jurisdictions. Staff contacted these jurisdictions and found no information that would preclude licensure. Criminal and personal history background checks were completed on all the substantial interest holders. Agents began their review on August 13, 2001, at Aristocrat Technologies headquarters in Las Vegas, Nevada. A second review was done of the parent company of Aristocrat Leisure LTD in September of 2001 at their facilities in Sydney, Australia. The procedures performed included an analysis of corporate records and a review of their manufacturing facilities in both the U. S. and in Australia. Aristocrat began operations in 1953 and their consolidated financial statements for the year 2000 show income of \$64.7 million dollars in Australian funds, which is equivalent to roughly \$33.6 million in U. S. funds. Based on their net income, no additional capital was needed for them to begin operation in Washington State.

Based on their investigation, staff recommends licensure of Aristocrat Technologies, Inc. as a manufacturer. Ms. Reyes reported that a representative of the company was unable to attend due to a prior commitment.

Commissioner Ludwig made a motion seconded by Commissioner McLaughlin to approve Aristocrat Technologies, Inc., located in Las Vegas as a manufacturer. Vote taken; the motion passed with five aye votes.

6. Phase II Review:

King City Casino, Pasco:

Susan Blanchett, Special Agent Supervisor in the Tacoma field office, reported that King City Casino is a commercial restaurant, lounge, truck stop, and house-banked facility located in Pasco. Their ownership is comprised of 15 percent each for Judy and Loren Schademan, and the remaining 70 percent is owned by the McClaskey Family LLC. One of the members of the LLC, Fred McClaskey, is also a 100 percent owner of the Thunderbird Casino and Lounge in Yakima.

This organization began operating its house-banked activities on August 10, 2001. Currently they have nine gaming tables; two non house-banked tables and seven house-banked tables, consisting of three Lucky Ladies, one Let It Ride, one Fortune Pai Gow, one Spanish 21, and one Three-Card Poker. Staff conducted a comprehensive investigation, including a review and observation of the operating procedures for the four key-operating departments. The review team compared the licensee's actual operating procedures to those required by WAC rules. The licensee's written internal controls were compared to the card room rules to ensure compliance and consistency. A review was also conducted of the organization's gaming and organizational records to ensure record keeping compliance. During that review, no hidden ownership or unreported third-party financing was noted. The violations that were noted during the review were verified as being corrected during the follow-up inspection. The city of Pasco was contacted to verify that King City Casino's gambling taxes were current and the Pasco Police Department was contacted to verify there had been no adverse impacts on the local community from the card room. Based on staff's review, staff recommends approval to operate at Phase II wagering limits. **Commissioner Ludwig** addressed the three technical or minor violations noted and commented that this was one of the better Phase II Reviews. **Ms. Reyes** affirmed.

Fred McClaskey came forward as the representative of King City Casino. Mr. McClaskey thanked Leanne Leroux, the special agent who conducted the Phase II investigation, saying she was very thorough and did a good job. **Commissioner Ludwig** asked Mr. McClaskey when their limits would go up. Mr. McClaskey replied that he thought they would probably wait until next week. Commissioner Ludwig congratulated him on his review. **Chair Orr** asked if there were any comments from the audience. There were none.

Commissioner Ludwig made a motion seconded by Commissioner McLaughlin to approve King City Casino located in Pasco for Phase II wagering limits. Vote taken; the motion passed with five aye votes.

At 2:25 p.m. **Chair Orr** called a recess until 2:45 p.m. (Deputy Director Berg was excused for the remainder of today's meeting). The meeting reconvened at 2:50 p.m.

7. Default Hearing:

Phally Lay, Card Room Employee

Arlene Dennistoun, staff attorney, Communications and Legal Department, reported that staff is requesting a default order be entered to revoke Phally Lay's card room license. She is currently authorized to work at Funsters in SeaTac, Café Arizona in Federal Way, and Goldie's in Shoreline. Ms. Lay is alleged to have cheated while playing blackjack at the time she had a conditional license because of a pending first degree theft charge. The Director brought charges against Ms. Lay for the cheating incident. These charges were sent by regular and certified mail with a cover letter clearly explaining that if she didn't respond to the charges, the Commission would issue a default order to revoke her license. The charges also clearly explained that staff must receive her request for a hearing within 20 days. Staff also called her and she emphatically stated that she did not want a hearing. A request for hearing was due on December 27, but it wasn't received until February 11, a delay of almost two months, before Ms. Lay requested her hearing. Staff has recommended that a default order be entered to revoke her license.

Chair Orr asked if she was cheating while she was employed or while she was playing cards as a patron. **Ms. Dennistoun** replied that it was while she was playing cards as a patron of the establishment.

Stephen Plowman stated he was representing Phally Lay and that Ms. Lay and her husband have been his clients for quite some time. He requested that a default order not be entered and that Ms. Lay be allowed to have a hearing. The factual representations by Ms. Dennistoun are, unfortunately, correct, the 20 days had expired. He is unsure why Ms. Lay indicated to the Commission that she didn't want a hearing. In communicating with Ms. Lay, he felt that she didn't understand the magnitude or import of her actions. After he met again with Ms. Lay, he contacted Ms. Dennistoun and submitted the request for a hearing. Mr. Plowman believed Ms. Lay's ambivalence in this matter may have had more to do with attorney's costs and the challenging complexity of the matter as opposed to the merits of her case. Mr. Plowman said that Ms. Lay had some valid merits and they would like to have an opportunity to present those to the Commission. He added that her personal circumstances warrant that she defend herself in this matter. Mr. Plowman said he realized that they haven't brought formal proceedings to set aside a default yet because the default hasn't been entered, but he would appreciate the Commission's time in allowing him to speak on her behalf.

Chair Orr asked staff when Ms. Lay could reapply for a license if the Commission accepts staff's recommendation. **Ms. Dennistoun** said Ms. Lay has a right to apply for a license at any time, but staff would recommend a denial based on this cheating incident. Chair Orr asked how long she would have to pay this penance before her slate is clean. Ms. Dennistoun said there isn't a definite time frame. Staff would have to review her background and other qualifying factors. Chair Orr asked the Commission if it wanted to hear this by virtue of the fact that Ms. Lay had not exercised her right to a hearing..

Jerry Ackerman said that what is before the Commission at this point is staff's application for an order of default for failure to respond within time limits set forth in the rules. The Commission has the option to either grant that application for an order of default or deny it and let the process unfold at that point. Mr. Ackerman anticipated that this matter would then be set for a hearing. The rule says that the appeal should be taken within 20 days and obviously that hasn't happened. The decision is ultimately up to the Commission, which has the discretion to deny the default application at this point.

Commissioner Niemi asked if the default is granted, is there any kind of penalty. **Ms. Dennistoun** responded that the only penalty would be that Ms. Lay's license would be revoked. If Ms. Lay wanted to reapply for a license, staff would look at it. Commissioner Niemi said she didn't see a problem with following staff's recommendations.

Commissioner McLaughlin asked if it was appropriate at this time to suggest that the Commission follow staff's recommendation to revoke Phally Lay's card room license. **Chair Orr** affirmed.

Commissioner Parker said he heard Ms. Lay's representative state that the reason she didn't respond in a timely manner was that she didn't understand the seriousness of the message or what was at stake. **Mr. Plowman** responded that he believed Ms. Lay is Cambodian, and although she speaks English well enough, he didn't think she understood the impact that this would have on her in terms of realistically seeking employment in this field for probably the better part of five years. Mr. Plowman mentioned that he represented another person where this had happened and it was quite some time before the application could seriously be considered by the Gambling Commission.

Commissioner Parker thought the videotaped evidence showed conclusively that Ms. Lay did what she is alleged to have done. **Mr. Plowman** said he hasn't reviewed the tapes, that he can only report Ms. Lay's side of the story. Mr. Plowman stated that Ms. Lay indicated that she had some authority to deal on behalf of another partner who was with her but had left the area. The more serious transgression, the cheating incident, was effectively blocked by the dealer at the time. Those are Ms. Lay's representations and he had to consider them as being meritorious, and if he could prove those representations, they would be adequate defense.

Commissioner McLaughlin stated that when Ms. Lay received her license, she was certainly well aware that cheating is not allowed. **Ms. Dennistoun** affirmed that since she is a licensed card room employee, she definitely knows that a bet cannot be increase after betting has closed. Commissioner McLaughlin asked whether Ms. Lay knew that the word "revoked" meant she would lose her license and might not get it back. Ms. Dennistoun affirmed. Commissioner McLaughlin told Mr. Plowman that it was wonderful that he was trying to represent Ms. Lay. Commissioner McLaughlin said she didn't think she would change her mind.

Commissioner McLaughlin made a motion seconded by **Commissioner Niemi** to revoke Phally Lay's card room employee license. *Vote taken; the motion passed unanimously.*

Chair Orr sympathized with Ms. Lay, but he hoped Mr. Plowman would convey to Ms. Lay that the Commission has a significant obligation to ensure that the rules are adhered to. **Mr. Plowman** expressed appreciation to the Commission for allowing him to make his presentation.

8. Default Hearing:

Douglas Wingert, Card Room Employee

Arlene Dennistoun said staff is requesting that a default order be entered for the card room employee license application of Douglas Wingert to work at Freddie's Club and Diamond Lil's in Renton. Mr. Wingert was convicted of a felony assault in 1999 and was not qualified for licensure. The Director brought charges against Mr. Wingert, which were sent by regular and certified mail. The cover letter and charges clearly explained that if there is no response to the charges, the Commission would enter a default order. Staff spoke with Mr. Wingert and he declined a hearing. By not requesting a hearing and by not responding to the charges, Mr. Winger waived his right to a hearing. Staff recommends that the Commission enter a default order denying his license. **Chair Orr** asked if Mr. Wingert or any representative were present. There was no response.

Commissioner Parker made a motion seconded by **Commissioner Ludwig** to accept the staff's recommendation to issue a default order denying Mr. Wingert's application for a card room employee license. *Vote taken; the motion passed with five aye votes*

9. Default Hearing:

Artic Tavern, Cosmopolis

Arlene Dennistoun reported that Cheryl Hoffman, owner of the Artic Tavern, applied for a punchboard-pull-tab license. Ms. Hoffman failed to provide adequate information on their source of funds despite several requests. Ms. Hoffman also failed to disclose her criminal history, even though the application clearly explains that all criminal history must be disclosed. The Director brought charges against the Artic Tavern for denial and the charges were sent by regular and certified mail. There was no response to the charges. The cover letter explained that if there was no response, the Commission would issue a default order to deny the application. Staff called and spoke with Ms. Hoffman and she declined a hearing. By not responding to the charges, Artic Tavern has waived its right to a hearing and staff is requesting that the Commission issue a default order. **Chair Orr** asked if Ms. Hoffman or any representatives were present. None came forward.

Commissioner Parker made a motion seconded by Commissioner Ludwig to deny Artic Tavern's application for a license to conduct gambling activities. *Vote taken; the motion passed with five aye votes.*

10. Other Business/General Discussion/Comments From The Public:

Commissioner Parker stated that they had a chance to talk with staff with Assistant Attorney General Jerry Ackerman about the report presented earlier on multiple ownership or concentration of ownership. Commissioner Parker wanted to take a few minutes to follow up on that report and mentioned that the reason for asking staff to look into this matter was to see whether there appears to be a problem emerging or if there is an emerging phenomenon on the concentration of ownership because of the Commission's general mandate to protect the public interest. The problem might come in the form of a concentration of ownership of the most desirable locations, particularly if there are outside investors seeing an opportunity to gain a monopolistic type of position in the marketplace. Or, with respect to the public interest, the problem could come in the form of a concentrated ownership, where the owner of a number of establishments could then gain a very influential position within the community and use that influence in some improper way. Staff's report indicates there doesn't appear to be a problem of that nature. Commissioner Parker thanked staff for the excellent report and asked that this be kept as an open issue and monitored. Then, periodically (about once a year), the Commissioners would like updates on the facts regarding the issue of ownership. **Chair Orr** agreed.

11. Executive Session To Discuss Pending Investigations, Tribal Negotiations & Litigation:

Chair Orr called for an Executive Session at 3:20 p.m. and reconvened and adjourned the public meeting at 4:10 p.m. Chair Orr adjourned the meeting until 9:30 a.m., February 15, 2002.

**COMMISSION MEETING
FRIDAY, FEBRUARY 15, 2002
DRAFT MINUTES**

MEMBERS PRESENT:

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SHIRLEY CORBETT, Executive Assistant; and
GAIL GRATE, Administrative Assistant**

Chair Orr called the meeting to order at 9:40 a.m. and said the meeting would start without Commissioner Niemi who would be delayed.

12. Approval of Minutes – January 10 & 11, 2002:

Commissioner McLaughlin made a motion seconded by **Commissioner Parker** to approve the Regular Meeting Minutes of January 10 & 11, 2002, as presented. *Vote taken; passed with four votes.*

13. Legislative Report:

Deputy Director Fleisher addressed the legislative report, which is divided into two parts. Part I concerns various bills before the Legislature. Part II are those designed to have a significant increase in state revenues through taxes or an expansion of gambling and taxes. These bills will continue until the end of session and it is not clear where the Legislature is going.

SHB 2624 Shared Lottery Games, also known as the “Big Game.” This bill is proposed by the State Lottery Commission to allow the state of Washington to participate in multi-state lottery games. Mr. Fleisher believed the Lottery would go with the Big Game rather than the Power Ball Game. **Commissioner McLaughlin** asked what the difference was. **Deputy Director Fleisher** responded that they are run by different entities, with different states participating in them. His understanding is that the fees charged to the states are slightly less for Big Game. The state of New York joined the Big Game just a couple months ago, resulting in a significant increase in the maximum prizes in that game. SHB 2624 has passed out of Commerce and Labor Committee and is in the House Finance Committee and will most likely be part of the budget package. Commissioner McLaughlin asked if this is the bill that has money tacked onto it for problem gambling. Deputy Director Fleisher thought it was in the Senate version of HB 2701, but it is not clear where the problem gambling money would end up, if it is adopted at all. **Director Day** added that because of the substitute bill, the language is similar to the pathological gambling bills and provides for a million dollars a year in treatment and \$500,000 a year in education expenses. He said that it is in the lottery bills as they are moving in their present status.

HB 2631 Background Check Bill. This bill is the Commission's request legislation, along with the Liquor Control Board to clarify the agency's ability to get national criminal background checks through the FBI to comply with the requirements the FBI notified the agencies about. HB2631 is in the House Rules Committee and they hope to get it out on the floor for action soon. The Senate version, **SB 6491**, was pulled from Senate Rules yesterday and is on the second reading calendar in the Senate.

HB2701 Problem Gambling Bill. Establishes a pathological gambling treatment program in DSHS within their current drug and alcohol treatment program. A million dollars for each of the next two years will be appropriated for the treatment of pathological gambling. The bill also appropriates half a million dollars for each of the next two years for problem gambling prevention activities and to expand programs currently being performed through the Gambling Commission. It involves several million dollars of General Fund money and, as everyone knows, the Legislature is in a significant budget problem. If they appropriate money for this purpose, it will be part of the end game package as they get to a final budget document.

SB 2767 prohibits the use of electronic benefit cards (similar to ATM cards) by welfare recipients to participate in activities licensed by the Gambling Commission, the Horse Racing Commission, or the Lottery Commission. The bill passed the House yesterday and is on its way to the Senate. It would require the Commission to adopt a rule directing our licensees to not accept these cards for gambling purposes.

HB 2774 was introduced by Representative Clements and would transfer to our agency the functions of both the Lottery and the Horse Racing Commissions to provide for one gaming agency for all state gaming purposes. Representative Clements wants it debated, but doesn't expect the bill to pass this session. Others have discussed this issue in the past, and it may be more of a topic of discussion over the interim.

Commissioner Ludwig asked if the Commission had taken a position regarding that bill. **Deputy Director Fleisher** answered a position was not taken regarding the combination of the various agency functions. Commissioner Ludwig said he wished to be on the record that he is personally opposed to this bill. The Gambling Commission is a regulatory agency and shouldn't be combined with two commissions that are promotional in their treatment of gambling.

Deputy Director Fleisher reported that the bill was in House Commerce and Labor Committee, but it didn't get out before the cutoff, so it's probably not going to pass this session, but it will continue to be an issue. Other legislators have brought this up in discussions over the past couple of years. They have asked why we need a horse racing commission since there is only one track instead of the previous three live tracks.

Commissioner Parker asked if this could be seen as a cost-cutting bill if they combine these agencies. Was there a fiscal note that specified the number of dollars that would be saved. **Deputy Director Fleisher** answered that there was no fiscal note, but he was sure the sponsors will make the argument that there will be some cost savings because there are certain duplications performed by the three agencies. **Commissioner McLaughlin** asked if the Lottery Commission and the Horseracing Commission are part-time commissions also. Deputy Director Fleisher affirmed.

Chair Orr said he shared Commissioner Ludwig's view and felt it was important that the information be shared with Representative Clements and others. **Commissioner Ludwig** suggested saving this for next session and Commission McLaughlin agreed. Chair Orr added that the policy statement is significant. **Deputy Director Fleisher** thought that he and Director Day could forward the Commissioners' concerns to the legislators and the sponsors. The bill itself is very short and without a lot of details, and it doesn't appear to be moving forward this session. Mainly, it just transfers the functions over to one agency. The lottery is a state-run gaming activity that promotes its activities. The Horse Racing Commission is mandated to protect and develop the equine industry in the state.

HB2817 was sponsored by Representative Lantz, along with Representatives Conway and Clements, and clarifies the issue discussed over the past few years on zoning authority of cities and towns relative to gambling and how it fits in with the statute that gives the Commission regulatory authority. HB2817 would add language to our statute that says that nothing in this chapter limits the authority of cities or counties to exercise its land use and zoning powers. The bill passed out of the House Committee and currently is in the House Rules Committee. Essentially, it

says that cities and counties would be able to exercise their full zoning powers, in addition to their authority to absolutely prohibit gaming activities.

Deputy Director Fleisher said the bill raises two issues. One interpretation is that in RCW 9.46.295 the county and city have the choice to either prohibit or allow an activity. The city's position is that this bill would provide two additional tools for the cities and counties. One would be to allow or restrict gaming in certain zones. The second tool would give the cities the ability to have gaming activities banned in all or a part of the town, but allow individual games through nonconforming uses or other so-called spot zoning. An establishment would either be grandfathered in or an exception made to allow a new one. **Commissioner McLaughlin** said the cities and counties actually have that authority now through the liquor control legislation. Deputy Director Fleisher responded that most places licensed by the Gambling Commission are also licensed by the Liquor Control Board, although other than in card rooms, the majority of liquor establishments are not licensed for gambling activities. **Deputy Director Berg** added that while many establishments are tied to a liquor license, the gambling rules do not require a liquor license, only that a food and beverage plan be submitted.

Director Day clarified that this bill would also allow a city to spot zone, which was a concern of the Legislature when they enacted the Gambling Commission laws and authority. In Ms. Patjens careful research she found that when the Commission was created from an ad hoc committee on gambling in 1973, it was recommended that local governments should have a local vote on what types of gambling activities were allowed, but not on regulating them. Director Day thought that this bill would allow a county or city to determine by zoning whether to allow a particular gambling center (a bowling alley) or a particular area to have gambling activity. **Commissioner Niemi** asked if there was anything in this statute that would amend what was referred to in the initial gambling legislation. **Deputy Director Fleisher** affirmed that the bill is amending part of our statute. He added that this bill strengthens the cities and counties authority to zone and clarifies what authority the cities and counties have. When it comes to the zoning power, there really are two issues: What geographical areas are going to be allowed to have gambling, and the spot zoning issue.

Jerry Ackerman said that under the 1973 Act a county or city can decide whether to allow gambling, but they can't regulate the type of gambling (like betting limits) that takes place. If they decide to allow gambling, the Commission will regulate, issue the licenses, and decide the scope of gaming. The amendment does not appear to change that; what it does is allow the cities and counties zoning powers to determine what part of town where gambling is allowed.

Commissioner Parker made a motion seconded by **Commissioner Niemi** to oppose this bill and direct Commission staff to communicate that in whatever way is appropriate.

Chair Orr called for discussion.

Commissioner McLaughlin asked if the bill in any way takes away the city's or county's right to land use and zoning regulations. **Chair Orr** thought that, as it stands, this legislation will give them more power. **Jerry Ackerman** said that a number of city attorneys and city land use lawyers would argue that the cities already have that power and that the Commission attorneys are misinterpreting how those two statutes are read together. The problem facing the Legislature is that some people think they have the power to zone based on gambling alone, based solely on the zoning statutes. The Commission's lawyers feel that this statute trumps that statute.

Commissioner Ludwig asked if he was correct in assuming that, based on present law (state statutes and the Commission's rules), there is absolutely no way to restrict a licensee from locating next to schools and churches. **Jerry Ackerman** replied that counties and cities still have their core zoning powers with regard to whether an area is going to be residential, business, mixed use, or manufacturing, etc. So they could, using one of those categories, zone to protect a school, etc. They simply can't zone just on the issue of gambling. Commissioner Ludwig said that neither the Commission nor a city can regulate the location of a gambling facility in the city if it's presently zoned for business. Jerry Ackerman affirmed.

Commissioner McLaughlin stated that she would have to abstain from voting with the information she has before her. **Chair Orr** asked if there were any more questions of staff. There were none. He then called for public comment.

Joe Baseel from Six Card Charlies said they were licensed three years ago. Pierce County then imposed a moratorium on gambling because a casino was planned right next to a church and a grade school. He said the county attorney felt they had to either let everybody in or put everybody out, that the county doesn't have the right to zone. If they did, they would welcome his industry with open arms. Mr. Baseel added that he was in favor of this bill. Pierce County told him that if they had the power to zone, they would welcome his industry with open arms. His establishment is located between a Mexican restaurant and a hockshop, and there are no schools, churches, or daycare centers in that area. He believed gambling or any other form of adult entertainment should not be located next to a church or school, and the city or county should have the right to control it by zoning to say where gambling can be located.

Chair Orr said that in his community there are some bowling alleys, which are usually family oriented, that have gambling. **Mr. Baseel** said that children in the bowling alley can be restricted from going into the area where there is gambling. He said his industry has argued with Pierce County but have been unsuccessful in changing their opinion unless a bill like this passes to give them the right to zone. He can understand the corruption issue, but in this day and age, there's enough newspaper reporters to bring it all to light so it won't be swept under the carpet.

Commissioner Parker asked if Mr. Baseel would have an opinion as to whether if cities and counties had this spot zoning authority, there would be expansion. **Mr. Baseel** didn't think there would be expansion. because he can move his location if he wants. What bothers him about moving his location is that he has 40 employees that have been working for him for three years and he feels obligated to them for their jobs. If he moves his location, they may not be able to commute to the new location and he would put all of these kids out of work.

Dolores Chiechi, Recreational Gaming Association, said this is an issue that's been within the Legislature for a few years and Deputy Director Fleisher mentioned the House's support has been there since 1999 when it passed 97-0. When it made it to the Senate, it died in committee for lack of support because of some of the same issues that are being raised here about spot zoning and local corruption and the reasons that the 1974 Act was put into place. Some of their members, in counties and cities feel that they are impeded from implementing their zoning authority. As Mr. Ackerman mentioned, there's parking, signage, and some other abilities to zone these businesses. As Commissioner Ludwig pointed out, in his area there are a couple of casinos that were put up near churches and schools because there wasn't that ability for a city to zone them out. Therefore, the RGA supports the concept of their businesses being located in areas that are away from churches and schools. Maybe a simple statement in statute saying gambling activities shall not be located near churches and schools would be a simpler way of getting this done. RGA does have some concerns about local corruption and other implications that could come to play. In answer to Commissioner Parker's question regarding expansion, there are locations that have put into effect bans or moratoriums because they fear they don't have control over where they can be located. They have stated that if they had the ability to set the locations, they would allow the industry to come in, which would provide tax revenue and jobs.

Commissioner Parker asked if there was a ballpark estimate of what that might represent. **Ms. Chiechi** said she believes there are currently 52 jurisdictions that have bans or do not allow mini-casinos or gambling activities; Bellevue is one that has opted out and Seattle. She would be guessing if she tried to say that "x" number of facilities would be going in if it was allowed.

Commissioner McLaughlin asked Ms. Chiechi for the RGA's opinion on this bill. **Ms. Chiechi** said the RGA supports the idea. Her industry desires to be located where they are wanted. While the RGA supports the idea of establishments being located where they are wanted, there are still some concerns.

Steve Strand, Big Brothers/Sisters of King and Pierce Counties, reported that his organization has operated for about 12 years within the jurisdiction of the city of Burien. On the block where their building resides, in one building they operate a bingo game, in another building the Elks Club operates a bingo game, the third building is Kennedy High School which operates a bingo game, and the fourth building is a church. These establishments have been in existence and together for many years and have operated well together. He pointed out that this is one end of the spectrum and is an example that muddies things up a bit. Burien also has moratoriums, but their ability and choice to allow them to move into that building and the other existing establishments to operate has been their choice as well. There is a lot of case-by-case analysis and the church portion of their four-building block was the

final one to move in, so giving the ability to spot zone could have a serious impact on operations that had been there for decades. Mr. Strand said traditional churches are changing their face and how they select their buildings and locations as well, so it's no longer stand-alone spiral towers; it's very common to be where the people will go.

Bruce Snyder, Diamond Game Enterprises, said he is Northwest Territory Manager in 11 states, and he has seen zoning like this in action. What normally happens is the cities put these types of establishments in less desirable locations, which then raises the property value. At that point, the city can dictate what the property is worth. Mr. Snyder felt that a Pandora's box was being opened if this bill was passed. Cities could zone so that an establishment can't locate in the middle, but can locate on the edge of town. Then, because it's the only place where gaming can be operated, top dollar can be charged for property that previously was worthless.

Chair Orr suggested they summarize their discussion and asked if there were questions.

Director Day felt that it was important that this issue was brought to the attention of the Commissioners so they were in a position to decide whether staff should take a position on it with Legislature. This statute does change the basic foundation of the section authority with the Commission and it would allow zoning solely based on gambling.

Chair Orr said that as he understands the motion is that the Commission would oppose the legislation because it appears to be contrary to the initial act of gambling in the state of Washington. He called for any further discussion. There was none.

Commissioner Parker restated the motion seconded by **Commissioner Niemi** to oppose this bill and direct Commission staff to communicate that in whatever way is appropriate. *Vote taken; motion carried with three ayes, one nay, and one abstention.* Commissioner Ludwig opposed and Commissioner McLaughlin abstained. **Chair Orr** asked that their concern be conveyed to the appropriate legislators.

Deputy Director Fleisher returned to his presentation of the list of legislation.

SB5064 is the Commission's request bill to change the penalties for cheating at gambling and establish two levels. The bill passed the Senate and is in the House Criminal Justice and Corrections Committee and is scheduled for a hearing in the House Committee next week. The remaining three bills on the list are the Senate versions of bills that he discussed previously.

Commissioner Niemi asked if they were talking about two different bills. **Deputy Director Fleisher** said there is a stand-alone bill. Commissioner Niemi asked if they are going to increase it to a Class B felony. Deputy Director Fleisher affirmed saying there are actually two parts to it. Commissioner Niemi asked what is the difference between a Class B felony and a gross misdemeanor. Deputy Director Fleisher explained that cheating in the first degree is the Class B felony. Commissioner Niemi asked if the other one was one person instead of more than one person. Deputy Director Fleisher affirmed, but pointed out that cheating in the first degree is either by one of our licensees, a conspiracy, or a criminal enterprise. Cheating in the second degree (gross misdemeanor) is by just one person.

Jerry Ackerman said it requires that more than one person be involved in the cheating enterprise, so if it could not be proved that there was a second participant in the cheating, then Section 3 would be a lesser inclusion of Section 2(1)(a). That's how the jury would be instructed if the defense counsel requested a lesser charge. **Commissioner Niemi** asked if there is a WPIC (Washington Pattern Instruction Criminal) existing that defines what was taken out. Mr. Ackerman said he is not aware that there is a WPIC for this particular crime, which is a Title 9 crime. Mr. Ackerman explained that a WPIC was created for criminal cases to instruct the jury so it understands what they're supposed to determine to decide whether a crime has been committed.

Commissioner Niemi asked where cheating is defined. **Deputy Director Fleisher** said it is on the first page of the bill. Section 1 of 5064, which is the current law, both defines cheating and establishes the crime and the penalty for it. What the bill does is take the current law, Section 1, and limits it to just the definition of cheating and puts the crime definitions and the penalties in Sections 2 and 3. Commissioner Niemi asked if any of these have been changed. Deputy Director Fleisher affirmed, saying there is a list of four.

Commissioner Niemi asked if there was a fiscal note on the pathological gambling bill. **Deputy Director Fleisher** said he doesn't think there has been a fiscal note on it. Commissioner Niemi asked if anyone had figured out how much it would cost to set this up, which would certainly go through more than \$500,000 within a year. Deputy Director Fleisher said that if she was referring to the activities that this Commission has done in this area, Gary Hansen from the Washington Council on Problem Gambling is present today and may be able to answer these questions. Commissioner Niemi asked if the Commission does this rather than someone else. Deputy Director Fleisher explained that we do it by contract. Currently, we have a contract that's about \$150,000 a year with the Washington Council on Problem Gambling for various education projects. Commissioner Niemi asked how this will change things. Deputy Director Fleisher said he thinks the intent behind this was to supplement the \$300,000 per biennium already being spending through contracted RFP (Request for Proposal) and this would increase the amount of those contracts.

Director Day added that there are two different portions to this funding. It establishes funds of \$1 million a year for gambling addiction treatment services and \$500,000 a year for education, addiction treatment training, public education, hotline crisis, etc. In Oregon, they have a \$3.5 million budget and do public awareness counselor training, counselor certification, help-line, outpatient and inpatient treatment. They are funded from the Lottery and use a three-tier structured system relying on Gambling Anonymous, followed by outpatient treatment, and then inpatient treatment. Budgets in other states vary, but generally it's an amount from \$1.5 million to \$3.5 million, so the amount budgeted in our state is similar.

Commissioner Niemi asked if the Commission contracts out. **Director Day** answered that in many cases we do because the Commission doesn't actually provide any treatment. **Deputy Director Fleisher** explained that in Washington the agency goes through a contract process with the Washington Council on Problem Gambling for the prevention, education, public awareness, help line, etc., but are not involved in treatment. The most significant part of this bill is not the money going to the agency, but the money going to the Department of Social and Health Services for treatment.

Commissioner Niemi asked whether they have ever done this before. **Deputy Director Fleisher** answered that he believed that to be the intent. Commissioner Niemi asked if they haven't done it before, how much is it going to cost them to set it up. Deputy Director Fleisher said he did not know. **Chair Orr** asked whose responsibility is it. He thought the Commission can ask the question, but it's actually the problem of the writer of the bill. Deputy Director Fleisher said that Commissioner Niemi was asking if there is a fiscal note for DSHS. He doesn't know the answer, but he will find out for her. Chair Orr said if there is a fiscal note, we should advise them to speak on it. If there's a fiscal note to our agency, the Commission should be aware of it.

Commissioner Niemi said that she doesn't think that this money will begin to pay for what the Commission is asking them to do. **Chair Orr** said this was another bill that was being labored over extensively, but Gary Hansen could be called on to provide more information. Commissioner Niemi said that was all the questions she had.

Deputy Director Fleisher addressed the Legislative Update. This section includes the group of bills that provide significant revenue to the state. The Legislature is in quite a state of flux because of the budget crisis. There are many legislators interested in exploring various ways to raise significant state revenue from gaming. Washington is one of the few states not having a state tax on gaming. He said that no one knows what's going to happen, but it will clearly be part of the budget deliberations. He listed several proposals that were formally introduced. There are a number of other proposals that are being discussed and we can't predict what the end of the session will bring.

SB 6561 Excise Tax / Gambling. This is Governor Locke's request bill and is exclusively a tax bill. It imposes a 10 percent state tax on gross receipts from punchboards and pull-tabs and a 10 percent state tax on the net win from social card games. It reduces the maximum local tax on social card games from 20 percent to 15 percent. The maximum combined local and state tax would total 25 percent. There are a few cities or counties that currently have a local tax rate over 15 percent. The difference is grandfathered in and effectively reduces the state rates on those with a tax bill over 25 percent. This bill has not moved in either committee and it basically appears to be dead at its current rate, which probably has to do as much with the size of the tax as anything. Mr. Fleisher is not sure that the concept of a state tax is dead for the session, but it has run into some serious opposition. The concern has been expressed that it triples the tax for the commercial card rooms and actually quadruples the tax for the charities and nonprofits.

SB6193 Consistency in Gaming. This has been discussed before. It was introduced by Senator Prentice last spring at the request of the RGA. The basic intent of the bill was to level the playing field between the commercial and charitable operators and the tribal operations. **Commissioner Ludwig** interrupted Deputy Director Fleisher's presentation saying that he thinks the Commissioners understand this and the House bill. He asked him to give them the status of the bill. **Deputy Director Fleisher** reported that none of the various machine gaming bills have moved out of committee. Because they all have significant potential revenue increases, they are exempt from all the cutoffs and are necessary to implement the budget. Mr. Fleisher said he didn't know how much they wanted to know about the bills since they may have been reading about them in the paper. What the final version, if any, will be is anybody's guess at this point.

HB 2946 Video Lottery Games is the terminal bill, which is pretty much like the Oregon system, where machine games are run by the state of Washington through the Lottery.

Chair Orr recessed at 10:50 and reconvened at 11:00.

RULES UP FOR FINAL ACTION

14. Bingo:

WAC 230-20-244; WAC 230-20-246; and WAC 230-20-249:

Amy Patjens, Manager, Communications & Legal, reported that there are three bingo rules that are up for final action today.

Item 14(a) Electronic bingo card daubers. These have been allowed since about 1994. By rule, these daubers can hold up to 66 bingo cards. This rule makes it clear that a bingo player can only play one of these in addition to as many regular hard cards as they wish.

Item 14(b) Changes in how winning bingo cards are verified. Currently, the winning card must be verified by a bingo employee and one neutral player. Under the amendment, an alternative method is allowed when a player has a winning card but is using one of those electronic daubers. This amendment would allow a bingo employee to verify the winner instead of using another player. Ms. Patjens noted that on the green paper in their packets there is a new version of this rule, but the language is not different from previous discussions. During printing of the agenda, an old version of the rule was used.

Item 14(c) Three-Number Speed Bingo. This was a change that was discussed during the Net Return Task Force, which concluded its work about a year ago. The rule change increases the maximum prize for a Three-Number Speed Bingo card from \$2 to \$7 and makes it clear that these particular games can accrue progressive jackpots. Staff would recommend final action.

Chair Orr called for questions. **Commissioner Ludwig** asked if there had been any opposition to the rule. **Ms. Patjens** replied no. Chair Orr asked for public comment. There was none and he asked for a motion to accept the rules. **Commissioner McLaughlin** asked if they could be approved all in one package. Chair Orr affirmed.

Commissioner McLaughlin made a motion seconded by **Commissioner Ludwig** to approve WAC 230-20-244, WAC 230-20-246, and WAC 230-20-249. *Vote taken; motion passed unanimously.*

15. Pull-Tabs:

WAC 230-30-033; WAC 230-30-045; and WAC 230-30-072:

Amy Patjens reported that three pull-tab rules are up for final action.

Item 15(a) Event pull-tabs, which are the ones that have a small number of tickets. They usually sell out quickly and are only allowed for charities. The event drawing is usually related to a bingo game. The nonprofit operators wanted to have the flexibility to have these types of tickets sold by their floor workers, rather than requiring a person go to the pull-tab area to purchase them. Detailed accounting records have to be kept to keep track of any pull-tabs issued to floor workers.

Item 15(b) This rule addresses carryover jackpots when a licensee closes or sells its business. This has occurred a few times and staff has received questions about how to disburse these funds. Staff felt it was important to codify it in a rule. The rule specifies four ways these can be disbursed: transferring the jackpot to the new owner or licensee, assuming they have a pull-tab license; awarding it to the player by playing out the game before they close the business; distributing it to the Washington State Council on Problem Gambling; or distributing it to a charity licensed by the Commission.

Item 15(c) Retention requirements. Commercial pull-tab operators are required to keep pull-tabs for at least two months after a game has been pulled and winning pull tabs of more than \$20 must be kept for 90 days. This rule requires that, in addition to keeping the tabs, they have to keep the flare, which is the poster located near the game that shows what prizes have been made. The flare is necessary for comparing the winning pull-tabs with those marked off the flare. Staff would recommend final action.

Chair Orr called for questions. There were none. He opened the rules up for public testimony and there was none, so he called for a motion.

Commissioner Parker made a motion seconded by **Commissioner Ludwig** to approve WAC 230-30-033, WAC 230-30-045, and WAC 230-30-072. *Vote taken; motion carried unanimously.*

RULE UP FOR DISCUSSION

16. Petition For Rule Change - Teaching The Public How To Play Craps: **WAC 230-02-205**

Amy Patjens reported that this petition is up today for discussion and will be up for final action next month. Any member of the public can submit a petition for a rule change. This petition was submitted by William Kirtland, who owns a business in Tacoma called A Player's Edge that sells gambling-related books, videos, and accessories. Mr. Kirtland wants to be able to teach the public how to play the game of Craps and possibly other games. He feels that this is a complicated game and a person loses quite a bit of money learning how to play it. It is important to note that there would be no gambling actually occurring and there would be no cost to enter nor any prizes paid. The only cost would be if a person, as a student, took this class from him. He has been in contact with staff for several months and basically raised some new questions that staff hadn't addressed before. One of the last things that staff recommended was that he submit a petition for a rule change to allow for more discussion on this.

Mr. Kirtland is requesting that a new section be added to the gambling service supplier definition to include providing educational and/or instructional classes or seminars pertaining to authorized gambling activities to the public. Staff has evaluated this for both regulatory and policy concerns. Director Day's memorandum that outlines those concerns is still in the Commissioners' packets. This is a policy call. Staff has some concerns as far as actually tracking the tables if the Commission decide to go this way. At the November meeting, then Commissioner Forrest asked whether staff could address some of those concerns through rule proposal. That was done last month and is the suggested rule language that the Commission voted on to file. Last month Mr. Kirtland testified that he would also like to teach some other games, and felt that the language should be broader than tables. Staff wordsmithed the rule and the result is on buff paper in the handout packet. The rule now says "gambling equipment" rather than "tables." It would also require that the Director approve any equipment, as well as its permanent location, and that the seminars be conducted at this permanent location. Basically, staff was concerned that someone would be approved for this and then if they change the training location, staff would lose track of the tables. Staff feels that it is important to track the equipment if the Commission decides to allow this.

Two letters have been received opposing this petition and are included in the packets. One is from Carter Reeve who believes that by allowing this, the legislative intent would be defeated. He felt that the legislative declaration, which was written in 1973, referred to limiting the nature of gambling and the scope of activities, and that they be monitored through strict regulation and control. He believes that this petition does the opposite of those things. He also raised some concerns about problem gambling and some statistics are included in his letter.

The second letter was received from Chairman Daniels of the Muckleshoot Indian Tribe, who also opposes the petition. It expressed several concerns, one being the matter in which they would be controlling the gambling

equipment, and the about a real and perceived expansion of gambling. The Tribe feels that the Commission is exceeding the mandate from the Legislature by creating a new license for an activity that doesn't have some type of connection with an otherwise licensed gambling activity. Currently, nonprofit organizations can possess a Craps table, which is connected to the activity of a fundraising event for which they could get a license.

Commissioner McLaughlin said it seems to her that by licensing something that promoted gambling, the Commission was going against what it was supposed to do, which was to regulate not promote gambling. **Ms. Patjens** replied that issue was raised by staff in their memorandum, but it is a policy call. There are people who are going to claim you're not actually promoting gambling; you're promoting the training of people who gamble so they understand the game. Commissioner McLaughlin said that if she remembers correctly, the petitioner can still teach the game, but not on a professional table. Ms. Patjens agreed that there's nothing that would prevent the petitioner from using a homemade table, which is what he is doing right now. It is very important for everyone to understand that this rule would allow the petitioner to use professional equipment. **Chair Orr** added that this rule also tracks that professional table. Ms. Patjens affirmed, adding that Mr. Kirtland received copies of the letters and notification, and is present in the audience.

William Kirtland came to the podium. He stated that he wasn't surprised to find two other letters of opposition. Different people have different viewpoints depending on where they are. One is apparently a private citizen and the other from the Muckleshoot Tribe. In response to Mr. Reeve, Mr. Kirtland said he would like to state for the record that he is not a criminal, nor is he an evil person, and neither is he a professional gambler as defined by the laws of this state. He pointed out that Mr. Reeve's letter paints a picture of him standing on a street corner luring teenagers into his store to teach them how to gamble. He said nothing could be further from the truth, and, in fact, he agrees with Mr. Reeve that teaching adolescents how to gambling would not be appropriate. Mr. Kirtland said he is a parent and a coach of an eighth grade girls' basketball team, and is aware of the importance of setting a good example for kids. He can state for the record that he has never had anyone under the age of 21 attend one of his seminars.

The Muckleshoot Tribe letter raised some different issues. **Mr. Kirtland** thought that the letter of opposition painted both the Gambling Commission and himself with an irresponsible brush. Additionally, he didn't see anything new that their letter brought to table. As far as he can tell, all the issues they've raised in their letter have been discussed at these meetings or with other Gambling Commission officials. He read from Mr. Daniels' letter "... it is critical to remember that the issue at hand is less a matter of gambling instruction and really a matter of controlling gambling equipment." Mr. Kirtland agreed with that; however, he pointed out that an individual would require a license, in this case a gambling service supplier license, in order to utilize the equipment that his proposed rule change intends. It is the petitioner's understanding that gambling service suppliers must pass extensive background checks and are regulated, as is the equipment they may possess. The petitioner's question is, what is the fundamental difference between how equipment he might possess as a gambling service supplier be regulated in comparison to equipment possessed by any other gambling service supplier. It seems to him that the most recent language staff has added to their alternative provides for tight control of the equipment. He said he has no opposition to that additional new language. He pointed out that he has made every effort to work with staff, work with the Commission, and to work with Gambling Commission officials from the very start. He is not trying to hide anything.

Chair Orr said the Commission appreciates that and has noted that he was upfront and asked a lot of questions. **Mr. Kirtland** said that from the start of this process he had heard fears concerning perception of how the Commission might be viewed and what The Players' Edge could be perceived to be. He pointed out that perception is not necessarily reality. Perception is a matter of your viewpoint depending upon where you stand. The average person on the street that he talks to and who comes into his store does not share the perceptions that have been raised to this Commission as far as its endorsing anything. Most people that he has spoken to view this as an opportunity for them to learn in a pressure-free, risk-free environment how to do something that they consider an occasional pastime. When a person visits The Player's Edge, there's no question concerning what kind of store it is. It's an outlet for responsible adults to gain more knowledge about casino gaming. It is something that, if the Muckleshoot's expansion of their own gaming operations could be used as a gauge, a significant percentage of our citizens enjoy as an occasional pastime. There have been further concerns cited about the possibility of widespread proliferation of stores like The Player's Edge. Theoretically speaking, anything's possible, but in the 70 years of legalized gambling in Nevada, 25 years of legalized gambling in New Jersey, and the 15 years since the explosive

growth of tribal casinos around the country, it's estimated there are half a dozen stores like The Player's Edge in the United States, which is hardly cause to wring your hands.

Mr. Kirtland closed by saying that whether the Commission decides for or against his proposal, this entire process has been very informative and educational to him. He came into this with absolutely no experience in the regulatory process. He thanked Mr. Day, Mr. Berg, and Ms. Patjens for their work on this issue and their fair treatment of his proposal. He especially thanked Susan Arland for her patience in answering his countless questions. He thanked the Commissioners for allowing him the opportunity to state his case before them and said it has been a pleasure to see our regulatory process at work.

Chair Orr asked if there were any questions. **Commissioner Ludwig** read from the top of page two of the Muckleshoot Tribe's letter "One can learn from the rules of the game, the wisdom of financial management, and the need to know when to walk away without using professional gaming equipment." He suspected that Mr. Kirtland would agree with that statement. **Mr. Kirtland** replied that he did agree with that; however, he doesn't just teach the rules of the game. His whole point is providing understanding of the game. Commissioner Ludwig asked if he could do that with a mockup or a picture of the table with the odds and when to play them. Mr. Kirtland replied that he had been able to do that with the makeshift equipment he uses, and his customers or students are understanding. He added that his customers, students, and the general public that come into his store do not understand what all the hoopla is about.

Commissioner Ludwig didn't feel that they need to see the dice rolling and hitting the back of a professional table. **Mr. Kirtland** interrupted saying he disagreed with that statement in that it's one thing to have someone talking about a theory and it's another to actually see how the theory works in action. Commissioner Ludwig said a video presentation would show them how it works in action. Mr. Kirtland countered that a video would also show dice rolling, hitting a table, etc. Commissioner Ludwig argued that it would eliminate the need to have a real table. Mr. Kirtland responded that the kit table that he purchased is not a real table. He would be shocked if he saw a table like the kit that he has at the Muckleshoot Casino or the Emerald Queen. It's not a professional device. He could argue that a deck of cards, as defined by the laws of this state, is a professional device. He has read the RCWs and as he understands it, a professional device is something that's manufactured to gamble with. He asked, what are cards for. Almost any card game you can name can be gambled with. It really is a matter of your perception of what it is. He was told that he could use a homemade table made out of plywood or wall paneling, which could be built in his garage in an afternoon, but it's far from being a professional device. **Commissioner McLaughlin** asked if somebody had called it a professional device. Mr. Kirtland replied that the reason he file this petition was that Gambling Commission officials could not make a determination based on photographs or the construction manual that he had. The letter he received from Director Day called it a professional device because it was manufactured for a particular purpose. Mr. Kirtland commented that you can buy a deck of cards at any Fred Meyer in town and you can buy dice. Commissioner McLaughlin pointed out that you have to have a logo on it if you're using it in a card room or a casino. You can't just use any cards. Mr. Kirtland agreed, but pointed out that the table is not built professionally and that it's not a piece of furniture per se. It is a breakdown kit.

Chair Orr thanked Mr. Kirtland for his testimony and asked if there were any other questions. There were none. He opened for public testimony.

Gary Murray, Vice President, Recreational Gaming Association, said one thing that was discussed was the difference between book smarts and actually performing an activity. He said we teach our kids how to drive by using a book and simulators, but it's a lot different when one gets behind the wheel and begins driving in traffic. In the gaming situation, and it doesn't matter whether it's cards, dice, or the roulette, once you stand at that table and have chips in your hand, all of a sudden you get tunnel vision and you're not sure what's going on. This training enhances a player's ability to not "learn the hard way" or throw their money away. It is in the public interest to teach responsible gambling. If they want to enjoy the activity, they should be able to have an opportunity to learn the activity. Mr. Murray referenced WAC 230-02-205(f) where it says that these can be possessed (reading) for the training of individuals to conduct the authorized gaming activity (end of reading). If we're teaching a dealer how to deal that game, we can have that device. So once you have that device, why can't you also run a class for the public? Since you're authorized to have it, and you're not charging money for it, can you use it to do additional things that are not necessarily prohibited under the law? There's nothing under the law that says you cannot teach someone how to use the device, so once you're allowed to have that device, would that be against any regulation?

Jerry Ackerman pointed out that they were wandering off the subject. He said Mr. Murray needed to understand that WAC 230-02-205(f) is a regulation defining the types of individuals and activities that qualify for this particular type of a license. Mr. Ackerman said it wasn't designed to address the type of issue Mr. Murray raised. This doesn't affirmatively grant you the power to do something or to take it away; it allows a license if a person falls into these categories. **Mr. Murray** responded that under that license you can have the professional gaming equipment on your premises for that use. Mr. Ackerman affirmed. Mr. Murray said that once you are allowed to have that device, does that preclude you from teaching your friends or anybody else how to play on that device. Jerry Ackerman responded that Mr. Murray needs to write up the specific fact pattern he is interested in and submit it to commission staff to review. They will look at what particular WACs and RCWs have bearing on this. Mr. Murray said that idea had just occurred to him and he wanted to find out if it had any pertinence here. Mr. Murray concluded with the statement that the RGA's standpoint is that they want the Commission to understand that those who understand the game are much better people to have at the game.

Commissioner McLaughlin stated that a gambling service supplier usually provides the equipment to the licensed premises. **Ms. Patjens** affirmed that it was one of the things they were allowed to do. Commissioner McLaughlin asked whether the agency has ever licensed a service supplier to use their equipment for themselves. Wouldn't they be required to be a licensed establishment in order to use or possess gambling equipment. **Assistant Director Derry Fries** replied that a service supplier isn't licensed to conduct a gambling activity. Commissioner McLaughlin asked if the Commission decided to regulate this, would it be considered a new activity. Assistant Director Fries replied that this would be added to laundry list of activities that are presently authorized. Commissioner McLaughlin reiterated that this would be a new activity on that laundry list. Assistant Director Fries affirmed.

Kent Caputo, attorney in the Seattle office of Miller Nash, on behalf of the Kalispel Tribe and the Jamestown S'Klallam Tribe spoke in opposition to this proposed amendment. Mr. Caputo said he felt a personal sense of responsibility to tell Mr. Kirtland that neither of his clients, and he is sure he could speak for the Muckleshoot Tribe as well, would view Mr. Kirtland as evil and can appreciate his frustration in trying to find out where the line is on what can be used and how it can be used. His clients' position is that whether people should be able to educate the public about gaming may or may not be a policy issue that the Commission will want to discuss, but it doesn't appear to be the policy issue today. It's really just a matter of how close can they get to a casino environment using professional gaming equipment to offer that type of training. It would be a quantum change in the policy of this state to move from the letter that Mr. Day sent a few months ago requiring you to remove the equipment from your premises within seven days or it will be confiscated, to a rule that will allow you to use all gambling equipment as long as it's in a pre-approved location. Mr. Caputo said he can appreciate that staff is trying to tighten this up as much as possible to ensure that, if these types of entities are going to have this type of professional equipment, they can be tracked.

The Tribe would submit that currently the Legislature is spending a lot of time trying to decide how far to go with policy in gaming, whether they can justify it with a budget or any other reason. Certainly, this type of large policy change plays into the debate that we're having and that we appropriately should have, whether it's called leveling the playing field or something else. The Tribe thinks this is an unnecessary rule, that the Commission's focus should be to help find ways for staff to figure out what that line is. When is it homemade? When is it professional? Rather than simply give in and draw the line at the farthest extreme, consider that there's a reason that this has been public policy for the state of Washington for decades. The Tribe encourages and would hope that staff can work with Mr. Kirtland and others to figure out just exactly what can be done. Can you put felt on the table? Can you use a video screen? Can you use computer imagery? Can you use a homemade table that doesn't look quite as good as the one in Caesar's Palace? Help them get over that frustration and work with the Commission without making this overwhelming rule change. The Tribe would hope that the Commission would not approve this change or move forward with this amendment.

Chair Orr thanked Mr. Caputo. He said staff and the Commission have heard both sides of the issue and it will be up for discussion at the next meeting.

RULES UP FOR DISCUSSION & POSSIBLE FILING

17. Distributor & Manufacturer Credit Restrictions:

WAC 230-12-340; WAC 230-12-330; WAC 230-30-106

Amy Patjens stated that this was the first time that the Commissioners had heard these rules.

Item 17(a) **Ms. Patjens** reminded the Commissioners that there is a general prohibition on extending credit. This would include everything from a restaurant being prohibited from not allowing someone to play a pull-tab before they've paid for it and extends to situations with manufacturers and distributors. Many aspects of business transactions are regulated because they involve gambling. The concern is usually influence and control. With the rules regarding credit there is more of a concern if you have one business that owes a lot of money to another business. As Commissioners Ludwig and McLaughlin may recall, these rules were discussed back in 1997 when there were several distributors who owed considerable amounts of money to manufacturers and other distributors. At the time, one of the requirements was that if a distributor became delinquent on a trade account and did not pay within the time agreed to, it was considered extending credit. The distributor was required to notify commission staff, which was usually the pull-tab manufacturer coordinator, who is a special agent that works in the field. Then secretarial support staff was required to notify all of the manufacturers and distributors that this business was delinquent and that any future purchases had to be cash only. As they might guess, almost as soon as that would be completed, the delinquent distributor would pay the delinquent account, the manufacturer would notify staff, and then staff would notify about 15 distributors and manufacturers that they could take them off their cash-only list. Staff felt that this was getting very labor intensive and something the Commission should look at.

Ms. Patjens said that the rule would require the manufacturers and distributors to notify each other, as well as staff. It would no longer be staff doing all the notifying. She pointed out that subsection (1) of this rule is underlined, which can make it look like it's a new requirement. It's not a new requirement, the language was simply moved from subsection (10) where that language was stricken.

Item 17(b) WAC 230-12-330 requires all distributors are required to sell gambling products to all licensed operators under the same price and for the same terms. The industry requested this rule. The intent of this rule is to reduce the likelihood of influence or control by a distributor favoring some licensees over others. Currently, discounts are limited to a single sales transaction, and they would like the rule changed to apply to multiple sales transactions that are made over a week period. Staff has no regulatory concerns with this because agents would be able to review a seven-day period and verify that the establishment had qualified for that discount. **Ms. Patjens** gave a practical example of a distributor offering a special 10 percent discount if you purchased 500 games over a seven-day period. An operator may have room for some of those games on Monday, get locked into the special price, and then pick up the rest of those games on Friday and still get that discount.

Item 17(c) WAC 230-30-106 deals with merchandise prizes. A pull-tab operator can award either cash or merchandise as prizes. The merchandise prizes listed on the flare are assigned winning numbers consecutively, i.e. 1-2-3. This rule clarifies that the prize that's worth the most should be assigned the lowest number, so the biggest prize would be a assigned #1 on the flare. A distributor raised some questions about it and staff felt this change will make it clearer to everyone.

Staff recommend filing these three rules for further discussion. **Commissioner Parker** asked if **Ms. Patjens** had any feedback from manufacturers on the first proposal. **Ms. Patjens** replied that they have questions and staff has been meeting with them over the past couple of months and held a separate study session. The industry would, of course, rather leave it exactly as it is and have agency staff continue to notify everyone, but they are willing to take it on.

Commissioner Ludwig made a motion seconded by **Commissioner McLaughlin** that WAC 230-12-340, WAC 230-12-330, and WAC 230-30-106 be filed for further discussion. *Vote taken; motion passed unanimously.*

18. Qualification Reviews:

WAC 230-08-255; WAC 230-04-064

Amy Patjens reported these two rules are up for discussion and possible filing after several months of discussion. These rules require the larger organizations to come before the Commission and show that they have made significant progress towards their stated purposes. If an organization had administrative charges pending or was not

meeting the current cash flow requirements (previously net return requirements), these reviews could become confusing. The previous rule said that these qualification reviews had to come before the Commission every year, even if they had some type of issue pending. Deputy Director Bob Berg reported in November that a different program was being reviewed that would have more value. The new program would require changes to a couple of rules. These rules put the new procedures into place. The Group IV and V organizations will come before the Commission once every three years instead of once a year. The reviews will be more extensive and will focus on the actual programs the organizations are providing. There will continue to be a financial focus, but it won't be the only focus. Ms Patjens noted that staff will still be required to submit financial statements to the Commission and will continue to have an important ongoing regulatory role, even though the organizations will only be coming before the Commission once every three years. If they have pending administrative charges, those would be resolved before they came forward.

Item 18(b) WAC 230-04-064 deals with the qualification reviews. Much of that language has been moved into the other rule. The other changes make the rule easier to read but don't impose any additional requirements on licensees. Staff recommend filing for further discussion. **Commissioner Ludwig** mentioned that this talks about making significant progress toward their stated goal and purpose. The Commission has seen qualification reviews where a charity or nonprofit may have income totaling over a million dollars and they have a net gambling loss after expenses. They would still meet their stated purpose under this rule. **Ms. Patjens** deferred to Deputy Director Berg to address the question because he has worked extensively with what significant progress means.

Deputy Director Bob Berg responded that as they discussed in Tacoma, there are two aspects to licensures, the significant progress and a regulatory issue with regard to adjusted cash flow. There could be an organization that would qualify for licensure under the rule of being a charitable or nonprofit organization that is making significant progress, but, in fact, is draining money from their bingo operation because they're in a negative cash flow position. This rule, as changed, would allow organization to resolve those administrative situations before being brought before the Commission. This would remove that quandary from the Commission, but it is a two-pronged test and an organization could be fined with one and not fined with the other.

Commissioner Ludwig made a motion, seconded by **Commissioner Parker** to file the two proposed rules, WAC 230-08-255 and WAC 230-04-064, for further discussion.

Commissioner McLaughlin observed that since the Commissioners wouldn't see these reviews for three years, an organization that was top of the line as far as the amount of money they took in on their bingo games, could send forth to their nonprofit as little as \$26 a year, the Commission wouldn't know about it under the new rule. **Deputy Director Berg** said that the adjusted cash flow requirements, which this Commission passed, significantly lowered the bar for these nonprofits to be in compliance. That is current Commission policy with or without this rule. What this rule means is that the expense to the nonprofits will be reduced because they will only have to appear before the Commission every three years. Staff would continue to have the regulatory presence because the material would still be filed with the Commission as it is now. Instead of having three or four each meeting, they would have one or two, and they would see them in three years. It really doesn't change anything from a regulatory perspective. The Commission's already made that policy call about lowering the amount the organizations have to return with the adoption of the adjusted cash flow. This rule does not change that at all. There is, comparatively speaking, a minimal expectation, if you look at it historically, as to what they have to return to their nonprofit purpose. That decision was made in Olympia a year ago. Commissioner McLaughlin thought that this was another decision to make. She asked if the Commission is lowering the bar again. Deputy Director Berg replied absolutely not; they are lowering the number of times an organization must physically appear before the Commission.

Commissioner McLaughlin asked if there was any way that the Commission could be made aware of, by written information, how a nonprofit was doing. **Deputy Director Berg** said that staff would be including in the Commissions' agenda packets how the bingo industry was doing region-by-region with quarterly reports, so the Commissioners can see how the state of the industry is going. He said it is important to not put the Commissioners in a position where staff is sharing information that the Commissioners may hear in their appellate capacity after an administrative law judge makes a decision on a case. The point of this rule was to keep those nonprofits that are in administrative difficulty from coming before the Commission unless they are present to talk about what they do in terms of their charters, but it's not going to change the regulatory program at all. Commissioner McLaughlin was concerned about not receiving a written report annually and Deputy Director Berg said he was sure they could find a

way to provide that. **Director Day** pointed out that a lot of the information depends on the frequency and how much the Commissioners would like on their regular update. Staff has been producing an efficiency ranking that lists the top 40 in the adjusted cash flow. He suggested that quarterly they could bring that to the Commission's attention, as well. It depends on how far down the list the Commission wants to go. Commissioner McLaughlin asked if it could be sent to them so that they could look it over. Director Day said that it's helpful because it gives a picture of the gross and adjusted cash flow all on one page. **Chair Orr** commented that this rule would provide an efficiency for the organizations because they would spend less money regularly attending a commission meeting and more money on their purpose. **Director Day** affirmed. **Chair Orr** called for further discussion. There was none and he called for the vote. Vote taken; motion passed unanimously.

Chair Orr called for any other discussion or public comment.

Kevin Mallahan, Bingo Manager for the Boys and Girls Clubs of Whatcom County, distributed a letter addressed to the Commission. He informed them that it is a letter from his Executive Director, Lynn Templeton. He read:

Dear Commissioners:

Our organization has received an "Advisory Letter" dated 2-08-02 regarding the negative cash flow regulations. We understand that the regulations would suspend our Bingo license, if we do not show a positive cash flow for the first quarter of 2002. The intention of the rule, as we understand it, is to weed out licenses with chronic return columns.

Our organization has a long history of positive cash flow. The Bingo operation has consistently returned dollars to the Boys and Girls Clubs of Whatcom County for more than 10 years. Being just a few miles from the Canadian border near Birch Bay, the game has always depended upon the Canadian customer. Sometimes more than 80% of our crowd is Canadian.

The 4th quarter negative cash flow, the negative cash flow in January, and our expected negative cash flow in February are directly related to the events of 9-11-01. The border has been alternately closed and slow, and our customers have not been able to reach us. For a time after the attacks, border personnel were specifically turning away folks who said they were crossing to play Bingo. Those people were scolded for frivolously taking up the time and resources of security personnel.

We are being pro-active in aggressively seeking a new site several miles south, and we are on the last stages of lease negotiations. Our current lease expires February 28, 2002. Our hope is to open for Bingo business at the new location on March 5, 2002.

We hope this change of venue will also see a less competitive business environment, as our current location would be dark and the new location will result in the current Bingo operator there closing. Additionally, we are told that a Bellingham Bingo operator will be closing within the next 60 days. These events will leave one weekday game (us) and one weekend game (Whatcom Crisis/Bingo 262) as the only major games in the County. We strongly feel this situation will assure positive cash flow every quarter.

We respectfully ask the Commission to consider and **act today on** one or more of the following:

- Pass a temporary emergency dispensation for us and/or all licensees located within 15 miles of the Canadian border
- Allow for non-consideration of the fourth quarter 2001 in the cash flow regulations in computing compliance.

It would be tragic to allow the events of cowardly terrorists to be a cause of ultimately closing down a longtime Bingo licensee. President Bush has exhorted all citizens to return to normal life, to travel, to do business, and to invest in the economy. Otherwise, "they" win.

This agency, the kids we serve, our Board, our customers, and our Bingo employees appreciate your immediate positive response to this emergency request.

Mr. Mallahan continued saying that at the time the rules were being formulated, it was felt they addressed the problems of games with a chronic history of noncompliance. However, at the time, no one imagined the events of September 11th. As a result of that terrorist attack, the Canadian border has been temporarily closed and there has been extensive congestion for many months. During this period, they had a drop in attendance ranging from 30 to 50 percent. Again, they are asking the Commission to grant a dispensation or a waiver for games within a 15 mile radius of the Canadian border.

Commissioner Ludwig asked if the Commission was allowed to grant any form of action requested today without a petition and notice. **Assistant Attorney General Ackerman** answered that the normal process, if he understood the request, would be a petition for rulemaking to give the Commission some latitude to provide an exception. Commissioner Ludwig thought Mr. Mallahan asked for something to actually be done for them today, and asked if that was possible. AAG Ackerman said he doesn't recall a procedure that would allow the Commission to do that today nor is there any developed language that would allow it. The Commissioners are not sitting in a quasi-judicial capacity acting upon Mr. Mallahan's specific case, which the Commission may at some point in the future, and there is no actual petition for rulemaking before the Commission. Commissioner Ludwig asked whether the Commission could consider at least one of the options requested, like discounting the fourth quarter's figures. Could they do that at a later date without prejudice to Mr. Mallahan for timely filing or timely review?

Director Day suggested it might be helpful to put the whole timeframe into perspective. The first quarter of this year ends on March 31st, and then there's a 30-day lag time for filing the report, so it would be the first two weeks in May before the Commission could actually accomplish a suspension. The Commission doesn't need to take immediate action on this. Staff could look at other options that might be worth considering and discuss them with the licensee, which staff would be happy to do. It may not be the perfect solution, but it may provide some options. **Commissioner Ludwig** said that keeping that in mind and the Commission's inability under the Administrative Procedures Act to do anything today, he asked Mr. Mallahan to work with staff.

Mr. Mallahan pointed out the timeframe they are working under and the reason for action today is that they are in the end stages of negotiating a lease. Their lease has already been discontinued in their current location, so they will be without a location at the end of February if this lease is not signed within the next several days. Interestingly, the lease is with a current bingo operator that wants to get out of bingo and wants to sell the building. There is an interested buyer for the building, but the buyer will only purchase the building contingent on Mr. Mallahan's organization signing the lease. It's a difficult decision (and maybe irresponsible) for the Boys and Girls Club Board to decide to sign a one-year lease knowing that their bingo license may be in jeopardy in April. That's the urgency; if the lease is not signed this week, at the very least it would be a major and complete disruption of their bingo operation. At that point their customers could be lost forever and the opportunity would have passed. **Chair Orr** said he understood their concern and hoped that Mr. Mallahan understood the Commission's dilemma, that they can't do what he has requested. He also assumed there might be some room for alternative action. Mr. Mallahan said staff offered some relief that was currently available, but it doesn't fit into their timeframe. He understands that there may be nothing the Commission can do today. Chair Orr said that he was already ahead of the curve in that he has come before the Commission, as opposed to waiting until they've lost their license. He said staff will try to figure out a way to help the situation, and understand there are concerns like relocation and new clientele, and they may not come back up to speed. All of these concerns are unknown at this time and the Commission cannot legally make a decision today. Mr. Mallahan said he appreciated the consideration that was given to this by both the Commissioners and the staff.

Commissioner McLaughlin wondered why Mr. Mallahan's organization didn't approach the Commission at the end of the quarter when they had their first negative cash flow to discuss how they planned to change that. **Mr. Mallahan** responded that the new rules are pretty clear that after two quarters of negative cash flow, your license is suspended with no other option other than to reapply. **Commissioner Ludwig** asked what the organization's situation was at the end of the third quarter. Mr. Mallahan replied they had a positive cash flow. Commissioner Ludwig noted that they are only talking about the fourth quarter. Mr. Mallahan affirmed saying they have only been out one quarter. Commissioner Ludwig asked if they had requested a waiver from the Director. Mr. Mallahan responded that waivers are not available. **Deputy Director Fleisher** affirmed explaining that under the new rule, there is no waiver available on negative cash flow.

Director Day explained that part of the problem they may be dealing with is not recognizing that there may be a lease provision. He emphasized that they have until May before something must be done. The other side of the equation is, if there actually will be negative cash flow, this licensee will have had a six month negative cash flow, which is significant. If an organization was below the adjusted cash flow but not in the negative, then they would file a plan with the Commission. Director Day and Deputy Director Fleisher have discussed whether the Commission would want to consider the whole circumstances around the September 11th incident as it applies to those establishments close to the Canadian border and whether the Commission would feel it would justify an emergency rule. Director Day suggested that nothing be entered into lightly or immediately considering all the actions that have already been taken and the struggle that this Commission has worked to resolve with the bingo licensees.

Mr. Mallahan pointed out that there had been an emergency rule enacted in the past to address a problem that was, in comparison to the 9-11 incident, a frivolous matter. **Commissioner Ludwig** asked if he had discussed with staff what he has asked the Commission. Mr. Mallahan affirmed that he had talked to staff and, right now, there is no protection for the position their game is in. There are avenues they could take, such as signing a lease with the hope that even with the suspension of their license (which they would expect to happen) their ability to make money in the building wouldn't be destroyed, but that doesn't appear to be reasonable. Commissioner Ludwig apologized for interrupting, but said he understands the situation Mr. Mallahan is in, but the Director said this wouldn't be an issue until May. Commissioner Ludwig suggested that Mr. Mallahan execute the lease if the landlord put an escape clause in it with language that the lease can be terminated if his organization loses its license. Then the organization could petition the Commission for an emergency rule to be heard at the next meeting. Mr. Mallahan responded that if the Commission does not pass an emergency rule today, that would be their next step.

Commissioner McLaughlin asked if 80 percent of Boys and Girls Clubs of Whatcom County's players are Canadian, would they travel to the new location. **Mr. Mallahan** responded that a large percentage of his Canadian customers would travel to his new establishment, but certainly not 100 percent. Commissioner McLaughlin asked how many miles would they be traveling. Mr. Mallahan replied about 10 minutes. Commissioner McLaughlin asked about the group that's closing their game and if they were in negative cash flow. Mr. Mallahan replied that they were not in negative cash flow when they chose to close their game. Commissioner McLaughlin asked if he felt they would have a successful game there. Mr. Mallahan replied that he knows they can. **Commissioner Ludwig** noted Mr. Mallahan was probably expecting to pick up some of the previous customers of the business that was closing. Mr. Mallahan responded that they expected to retain all of those customers in addition to retaining a good portion of their own customers from Canada. **Chair Orr** said it sounds like they have a handle on it.

19. Other Business/General Discussion/ Comments from the Public:

Chair Orr called for comments.

20. Adjournment:

With no further business, Chair Orr adjourned the meeting at 12:10 p.m.

Submitted by Gail Grate, Administrative Assistant 4